

EXHIBIT 4

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - -X

MARK I. SOKOLOW, ET AL.,
Plaintiffs,

vs.

Civil Action No.
1:04-cv-00397-GBD

THE PALESTINE LIBERATION
ORGANIZATION, ET AL.,
Defendants,

- - - - -X

DEPOSITION OF JOHN B. QUIGLEY

Columbus, Ohio

Thursday, October 10, 2013

REPORTED BY:

KAREN SUE GIBSON

REF. NO.: 10461

Page 14

1 A I don't remember when I started teaching
2 it exactly, but it was after 1983.

3 Q Okay. At some point after 1983. Was it
4 within five years, roughly?

5 A Probably, yes, yes.

6 Q And had you had any background in the
7 Middle East Conflict before you started teaching that
8 course?

9 A Well, it's my background in international
10 law. It's like a subset of international law.

11 Q Okay. So you had studied that conflict
12 specifically in your capacity as a professor or
13 student of international law?

14 A That's right.

15 Q And how had you studied it?

16 A By reading and studying the relevant
17 treaties and documents.

18 Q All right. Had you -- had you written
19 anything on it at that point?

20 A I think the first major thing I wrote
21 would have been a book that was published around
22 1989.

23 Q What was the book?

24 A The title is "The Challenge" --
25 "Palestine and Israel: A Challenge to Justice."

Page 15

1 Q Okay, okay. And you said that your
2 experience was from reading and studying relevant
3 treaties and the like. What were the specific -- if
4 you recall, the specific treaties and reading that
5 you did to become acquainted with the conflict before
6 you started teaching that course?

7 A Well, it would have been the
8 international documentation relevant to the conflict
9 going back to the time of the First World War, the
10 Balfour Declaration of Britain, the mandate of the
11 League of Nations over Palestine, the activity at the
12 United Nations when the United Nations came into
13 existence.

14 Q Any others that you remember?

15 A Those would be the major ones.

16 Q Okay. And what do you mean -- what do
17 you mean specifically -- this is going back all the
18 way to the beginning. What do you mean exactly by
19 the field of international law? What does that
20 encompass when you use that term?

21 A Well, my focus is what we call public
22 international law, the law between states --

23 Q Okay.

24 A -- customary international law, the law
25 of treaties, obligations among states, remedies for

Page 16

1 states when obligations are violated.

2 Q Okay. And what do you mean by states?

3 A The states in the sense of nation states,
4 states of the world.

5 Q And I am sure we are going to get much
6 more into this but what is your -- what's your
7 definition of a nation state or a state of the world
8 as you said?

9 A Well, it's an entity that's accepted in
10 the international community, accepted by other states
11 as having that status.

12 Q Okay, okay. So you -- before you began
13 teaching the Middle East Conflict seminar, you got
14 acquainted through reading and studying all these
15 relevant documents we went through. Do you have any
16 other experience subsequent to that other than the
17 teaching and the -- and what you did to prepare for
18 teaching the course? Do you have any other
19 experience with the Middle East Conflict?

20 A Any other experience? I mean, that's the
21 way that I, you know, developed expertise on the
22 subject was by teaching.

23 Q So just more of reading and studying the
24 relevant documents.

25 A Yes, yes.

Page 17

1 Q Okay. Have you ever visited Israel?

2 A Yes.

3 Q Okay. How many times have you visited?

4 A Half a dozen, approximately.

5 Q Okay. When did you visit? When were
6 those?

7 A 1977.

8 Q Testing your memory here, I know.

9 A Right. Several times during the 1980s, I
10 don't remember the exact years, and several times
11 during the 1990s as well, and several times during
12 the first decade of this century.

13 Q Okay. And do you speak Hebrew?

14 A No.

15 Q Okay. And what was the purpose of those
16 visits? I mean, we can take them one by one. In
17 1977, why did you go?

18 A That was a visit with a group of lawyers
19 that were there to just get a general idea of the
20 situation from the standpoint of legal issues.

21 Q Okay. And was it a conference?

22 A Not a conference, it was just a visit, a
23 group of lawyers.

24 Q And was the group of lawyers all from the
25 United States, or were they from around the world?

5 (Pages 14 to 17)

<p style="text-align: right;">Page 42</p> <p>1 Q Okay. I think that -- does that exhaust 2 in your recollection your visits to Israel? 3 A Yes, it does. 4 Q Okay. Have you visited the West Bank 5 and/or Gaza separately from your visits to Israel 6 that we just discussed? 7 A Well, the visits have included -- 8 Q Right. 9 A -- the other territories. 10 Q But have you ever been to the West Bank 11 and not Israel? 12 A No. I think I have been in Israel each 13 time. 14 Q And the same is true of Gaza? 15 A Yes. 16 Q So we've covered all these from the '70s 17 through the -- we've covered all your visits to that 18 area of the Middle East. 19 A Uh-huh. 20 Q And have your -- other than developing 21 more knowledge in this area have your views on any 22 issues transformed in any specific ways through those 23 visits and through that experience? 24 A Are you asking about a particular issue 25 or?</p>	<p style="text-align: right;">Page 44</p> <p>1 A Well, I've probably gained more knowledge 2 about how these issues play out; but, you know, my 3 basic views on them have not fundamentally changed. 4 Q Okay. And is there a difference between 5 I guess the way these things play out and sort of 6 the -- your experience on the ground in the areas as 7 opposed to I guess the way you've -- you've gained 8 knowledge through reading and your studies here in 9 the United States? 10 A Well, I mean, when you talk to people who 11 are living through the conflict, it gives you a sense 12 of the urgency and the need for some resolution. I 13 would say that's the major thing that I've gained by 14 speaking with people on both sides of the conflict. 15 Q Okay, okay. So to recap, and we have 16 been talking about your professional career, since 17 graduating law school your career has consisted 18 primarily of the fellowships and the academic 19 professor experiences you've held after law school? 20 A Yes. 21 Q And currently you are still a professor 22 at Ohio State? 23 A Yes. 24 Q And now a professor emeritus? 25 A Yes.</p>
<p style="text-align: right;">Page 43</p> <p>1 Q I want -- well, okay. So, for example, 2 we talked about the law of belligerent occupation. 3 Has your view on that changed at all through your 4 initial visit to Israel and to the present? 5 A I wouldn't say my basic view has changed, 6 that is, my view was that Israel holds the West Bank 7 in a status called belligerent occupation but that 8 has been the view of the Supreme Court of Israel for 9 many years so my view hasn't changed. 10 Q Okay. And what do you mean by 11 belligerent occupation? 12 A It's the status where an army is in 13 occupation of -- of territory that is outside the 14 sovereignty of the state that that army represents. 15 Q And the territory we are talking about 16 here is the West Bank and Gaza? 17 A Yes. 18 Q And any additional territory? 19 A Well, the Golan Heights as well would be 20 under belligerent occupation by Israel. 21 Q Okay. So that was what I meant by have 22 your views on these issues developed or changed at 23 all. Can you think of any other specific issues 24 related to the conflict in the Middle East that have 25 changed or developed over the years?</p>	<p style="text-align: right;">Page 45</p> <p>1 Q Do you have any other experience with 2 the -- related to the Middle East Conflict other than 3 what we've already discussed? 4 A I think that's the totality of it. 5 Q Okay. Are you a U.S. qualified lawyer? 6 A Yes. 7 Q Okay. So you are admitted to -- I think 8 this is on your CV. You are admitted to several 9 bars. Massachusetts is one; is that right? 10 A Massachusetts isn't active. 11 Q It isn't active, okay. And is Ohio 12 active? 13 A Yes. 14 Q And you have been a member of the Ohio 15 Bar for -- since 1973? 16 A Yes. 17 Q Okay. And then the United States 18 District Court for the Southern District of Ohio, is 19 that membership active? 20 A Yes. 21 Q Okay. That's been active since 1976? 22 A Yes. 23 Q Okay. And what about the Sixth Circuit? 24 A Yes. I was admitted to practice there as 25 well.</p>

12 (Pages 42 to 45)

Page 86

Page 88

1 Q Okay. Your comments --

2 A Of course, I am making a conclusion that
3 Palestine is a state. I mean, it's possible that
4 someone else could cite sources that go in the other
5 direction that I didn't mention here. I mean, I
6 would have responses to those but -- but there may be
7 sources that others would cite that I didn't cite
8 here.

9 Q Sure. You were compensated for providing
10 this report, correct?

11 A Yes.

12 Q And what was your compensation?

13 A \$250 an hour.

14 Q Okay. Is that the same hourly rate for
15 testimony? Is \$250 also the rate that you're
16 receiving for providing testimony, or is it exclusive
17 to your writing of the report?

18 A It's the same.

19 Q Okay. And should you provide testimony
20 at trial, is that also the hourly rate that you'll
21 receive for that work?

22 A I suppose so.

23 Q How much time did you spend writing the
24 report?

25 A I don't remember. It's in a document

1 A Well, the history of the issue, how it
2 developed after the breakup of the Ottoman Empire,
3 the subsequent treatment of the issue through the
4 League of Nations and the United Nations, and then
5 the issues that are controversial as between the
6 parties presently.

7 Q In -- in the affidavit you provided for
8 the Hernandez case, you also claimed your expertise
9 was on international law generally, correct? Exhibit
10 4, I think.

11 A Uh-huh, yes.

12 Q And here in your report which is
13 Exhibit -- Plaintiff's Deposition Exhibit 5, you also
14 claim that you've had extensive practical experience
15 in the field of international law generally, right?

16 A Yes.

17 Q Okay. And you -- as opposed to your
18 practical experience, you go on to say that you have
19 also written extensively on that subject, the field
20 of international law.

21 A Yes.

22 Q Okay. Are you asserting any subject
23 matter expertise with respect to the Arab-Israeli
24 Conflict?

25 A Yes. I am asserting expertise with

Page 87

Page 89

1 that I submitted to -- to the law firm.

2 Q Just an estimate is okay. Does about 19
3 hours sound right?

4 A Yes, yes, it does.

5 MS. MACHNES: Okay. I
6 think it's a good time to take a break,
7 and we'll come back.

8 (Recess taken.)

9 Q Professor Quigley, what are you offering
10 yourself as an expert in in this case?

11 A International law.

12 Q Are you offering yourself as an expert in
13 any other area?

14 A Well, the -- the issue of statehood
15 involves the question of how the international
16 community has dealt with Palestine so I would say
17 that I have expertise on that issue.

18 Q And you write in your report you have
19 written extensively on the Middle East, right?

20 A Yes.

21 Q What do you mean by issues relating to
22 the Middle East other than Palestinian statehood?

23 A Well, I've written on a variety of issues
24 that relate to the Arab-Israeli Conflict.

25 Q What are the issues?

1 respect to how the international community has dealt
2 with -- with the status of Palestine because that's
3 really the essence of the issue of whether an entity
4 is or is not a state. It's how the international
5 community deals with it so you do have international
6 law in the background, but the actual issue in my
7 report is more factual than legal in character.

8 Q But you don't expressly in your report
9 claim to have subject matter expertise with respect
10 to the Arab-Israeli Conflict; is that right?

11 A Well, I'm not sure what you mean by
12 subject matter expertise on the Arab-Israeli
13 Conflict.

14 Q Well, you say you have extensive
15 practical -- in this paragraph Roman Numeral 1.2 you
16 say you have extensive practical experience in
17 international law, and you say you have written
18 extensively on international law and in particular on
19 issues relating to the Middle East.

20 A Yes.

21 Q So you don't expressly assert subject
22 matter expertise with respect to the conflict in the
23 Middle East -- or, sorry, with respect to the
24 Arab-Israeli Conflict specifically?

25 A Well, I have certain expertise on

23 (Pages 86 to 89)

Page 102

1 Q And remaining on a payroll would
2 constitute some form of encouragement?

3 A Well, I am not sure what remaining on a
4 payroll means when a person is in prison and
5 presumably -- are they being compensated while they
6 are in prison?

7 Q To the extent the person gets out of
8 prison and the money has now been in a pile in a bank
9 account somewhere that they then can access, they are
10 being compensated while in prison.

11 MR O'TOOLE: Is that
12 question a hypothetical?

13 MS. MACHNES: We are
14 talking about a hypothetical.

15 MR O'TOOLE: Could you
16 repeat the hypothetical?

17 Q We are talking about a group of
18 state-employed security officers who have planned and
19 perpetrated acts of violence against unarmed
20 civilians, who were then convicted of those acts, are
21 imprisoned, and while they are imprisoned remain on
22 the government's payroll.

23 A And you are asking for my opinion apart
24 from what the law might or might not be on this as to
25 whether there should be a law that --

Page 103

1 Q Whether you think that something -- a
2 government -- whether you think that's a legitimate
3 thing, a justifiable thing for a government to do, to
4 keep state -- to keep people who were state
5 employees, who have then been convicted of these acts
6 of violence, to keep them on their payroll after they
7 have been convicted and imprisoned?

8 A I don't really have an opinion on that.

9 Q Okay. How about if while these same
10 hypothetical security officers after they're
11 convicted and imprisoned are given promotions, not
12 only are they kept as government employees but they
13 are given promotions while they are in jail just on
14 their -- in their files.

15 A I don't have an opinion on that.

16 Q Okay. Are you aware of any international
17 law that allows a government to give such promotions?

18 A I'm not aware of any international norms
19 one way or the other.

20 Q Okay, okay. So in your report, which is
21 Plaintiff's Deposition Exhibit 5, you take the
22 position that "The Palestinian Authority, also known
23 as the Palestinian National Authority, is a governing
24 authority of Palestine," correct?

25 A Yes.

Page 104

1 Q By the way for purposes of this
2 deposition what is your definition of Palestine?

3 What are we referring to when we say -- when we use
4 the term "Palestine"?

5 A It is a state.

6 Q Okay. By using the term Palestine, are
7 you prejudging the -- whether -- the issue of whether
8 Palestine is a state or not?

9 A Well, I mean, the term is used in many
10 ways. The term can be used historically for ancient
11 times. The term is used in many ways. It's my
12 conclusion that Palestine is a state.

13 Q Okay. But by using the term you are not
14 necessarily acknowledging one way or the other
15 whether Palestine is a state.

16 A Well, I mean, if I am talking about
17 ancient history, I can use the term Palestine in
18 another sense, but the way I am using it presently,
19 yes, it does imply that Palestine is a state.

20 Q Okay. How do you define governing
21 authority?

22 A Well, an entity that carries out
23 governmental functions.

24 Q Okay. And your position is that the
25 Palestinian Authority, which I'll refer to as the PA,

Page 105

1 is a governing authority of Palestine, right?

2 A Yes.

3 Q So are there other governing authorities
4 of Palestine?

5 A Yes, the Palestine Liberation
6 Organization.

7 Q Okay. Are there any others?

8 A Hamas would be another one.

9 Q Okay. And any others?

10 A No.

11 Q Have there been any others through the
12 course of history, governing authorities of the
13 territories, that you believe constitute a state of
14 Palestine?

15 A Well, there was the Ottoman Empire for
16 several centuries, up until the First World War.

17 Q Anything else?

18 A You are asking what about governing
19 authorities of the area? Well, during the period
20 after the First World War, the British government had
21 administrative functions with regard to -- to
22 Palestine. So it would have been an authority,
23 although it was not -- I mean, it was administering
24 the state of Palestine. After the Second World War,
25 the Egyptian government was in belligerent occupation

27 (Pages 102 to 105)

Page 106

1 of Gaza so it was -- it was a -- you might say a de
2 factoid administering authority, similarly for Jordan
3 and the West Bank, and then Israel became a
4 belligerent occupation -- belligerent occupation
5 after 1967.

6 Q Okay. Focusing on the 2002-2004 period,
7 what were the governing authorities of Palestine?

8 A It would be the Palestinian National
9 Authority and the Palestine Libration Organization.

10 Q Okay. And the Palestinian National
11 Authority is also the Palestinian Authority which --

12 A Yes.

13 Q -- can also be abbreviated PA?

14 A Yes.

15 Q And the PLO is the Palestinian Libration
16 Organization --

17 A Palestine Libration Organization.

18 Q When did the PA become a governing
19 authority?

20 A Well, first, it would have been under
21 the -- the agreement on Jericho and the Gaza Strip,
22 1994.

23 Q And what are the PA's governmental
24 functions?

25 A Well, it carries out the kinds of

Page 107

1 functions that governments normally do in -- in
2 certain of the territory of Palestine.

3 Q Can you list the functions specifically?

4 A Collecting garbage, administering the
5 civil service of the country.

6 Q Those are just some examples?

7 A Those are examples of governing
8 activities.

9 Q Okay. And you're familiar with the
10 various documents that make up the Oslo Accords,
11 right?

12 A Yes.

13 Q And the parties to the Oslo Accords were
14 the PLO, Palestine Libration Organization, and the
15 state of Israel, right?

16 A Yes.

17 Q And you're also familiar with the United
18 Nations General Assembly Resolution 69/19? Right?
19 It's the 2012 General Assembly resolution.

20 A The numbers are?

21 Q 067/19.

22 A Yes.

23 Q You are familiar with that resolution?

24 A Yes.

25 Q And in that resolution the PLO is named

Page 108

1 as representative of the Palestinian people, right?

2 A Yes.

3 Q Okay. What are the governmental
4 functions of the PLO?

5 A The PLO is involved primarily with
6 representing Palestine at the international level.
7 It maintains embassies, diplomatic accord around the
8 world.

9 Q Okay. And where does the PLO derive its
10 authority from?

11 A Well, it's like any governing authority.
12 It derives its authority ultimately from the
13 population of the country.

14 Q And it -- it has -- it acts according to
15 a charter, right?

16 A It has a document, yes, called a charter.

17 Q Okay. Is the PLO's authority related in
18 any way to the PA's authority?

19 A Yes. It was the PLO that actually
20 constituted and created the P -- what you are calling
21 the PA.

22 Q Okay. Do their zones of responsibility
23 overlap in any way?

24 A They may, though broadly the functions
25 are separate.

Page 109

1 Q Okay. And are they -- are the -- is the
2 authority of the PLO broader or more -- or more
3 narrow than the PA in any way?

4 A Well, they are different. They are
5 different spheres of activity. I hesitate to
6 characterize quantitatively.

7 Q Okay. Are they -- are they both limited
8 in any way?

9 A Well, it's -- I mean, it's a matter of
10 shared functions, I would say.

11 Q What do you mean by that?

12 A That they have an understanding as to
13 which one does which kind of function.

14 Q Okay. Is there any overlap in terms of
15 personnel?

16 A Yes, I think there is.

17 Q And what's the extent or nature of that
18 overlap?

19 A I -- I don't know that precisely enough
20 to give you an answer.

21 Q Do you have any general understanding
22 about the nature of the overlap between the personnel
23 in the PA and the PLO?

24 A Well, the top, I believe Mr. Abbas is the
25 chair of the PLO and is also the head of the PA, you

28 (Pages 106 to 109)

Page 110

1 know.

2 Q Okay. And so you are familiar with the
3 1995 agreement that's referred to commonly as the
4 Oslo Accord II, correct?

5 A The interim agreement of September, 1995,
6 yes.

7 Q Okay. And in that agreement are there
8 any limitations on the Palestinian Authority's
9 authority?

10 A It's specified it's not supposed to
11 represent Palestine at the international level.

12 Q Okay. And that didn't have any effect on
13 the PA -- excuse me, the PLO's authority to conduct
14 activity at the international level.

15 A Correct.

16 Q Okay. So in your opinion what exactly is
17 the distinction between the PA and the PLO?

18 A Well, the PA carries out functions in the
19 administration of territory, whereas, the PLO
20 represents Palestine at the international level.

21 Q Okay. But they may have overlapping
22 personnel.

23 A Yes.

24 Q And they may have other overlapping
25 specific areas of responsibility for.

Page 111

1 A Yes.

2 Q Okay. Is this -- is the nuances of
3 the -- are the nuances of the distinction between the
4 PLO and the PA in your report at all?

5 A Well, they are both governing authorities
6 of Palestine, so for purposes of my report it doesn't
7 really matter precisely which functions are carried
8 out by which one.

9 Q Okay. It's just relevant that there is a
10 governing authority of --

11 A That's right, that there is -- that there
12 is a -- a governing authority.

13 Q Okay. And why is that relevant?

14 A Well, that it acts on behalf of a state.

15 Q Okay, okay. So in -- in opining on
16 government authority of a state, and in particular
17 Palestine here, do both or all of the state's
18 governing authorities need to be considered?

19 A Well, I mean, the issue is whether there
20 is a state. The governing arrangements can be made
21 in various ways.

22 Q So as long as there is a governing
23 authority, it's not necessary to consider any other
24 governing authorities.

25 A Well, that's right, except that there are

Page 112

1 situations where there is -- where the governing
2 authority is not able to exercise any control in the
3 state, for example, when it's under belligerent
4 occupation, so you might not have any actual exercise
5 of authority by any governing authority, but you can
6 still have a state.

7 Q Okay. Oh, and by the way, what are the
8 governmental functions of Hamas, which you mentioned
9 as another one?

10 A It administers the -- in the Gaza Strip.

11 Q Okay. In your report you also take the
12 position that Palestine is a state, right?

13 A Yes.

14 Q Okay. And generally what body of law do
15 you use to support that opinion?

16 A Well, it's international law that is --
17 is the background that determines when an entity is a
18 state but -- but that is -- but what international
19 law says is that states are those entities that are
20 accepted by the existing community of states as being
21 a state.

22 Q Okay. Be fair to say this is a
23 relatively complicated area and analysis?

24 A It can be, yes. There are no bright
25 lines in international law as to what level of

Page 113

1 acceptance is sufficient or exactly how that
2 acceptance comes about.

3 Q And in addition to no bright lines,
4 there's really no conformity internationally as to
5 what -- how to conduct this analysis or what would
6 satisfy definitions under this?

7 A There isn't. It's just when the
8 expressions of acceptance of an entity get to a
9 certain level, then -- then it becomes difficult to
10 say that an entity is not a state.

11 Q Is there any conformity as to what that
12 level of acceptance is?

13 A There really isn't. I mean, one example
14 would be the admission of Israel to the United
15 Nations in 1949 at a time when it had some acceptance
16 by other states but -- but many states were still not
17 sure what -- what their opinion was. But it was
18 admitted to membership in the United Nations, and a
19 requirement of admission is that an entity is a
20 state. The -- Palestine has very significant
21 international acceptance, I would say sufficient to
22 make it a state by whatever the standard might be.

23 Q But it hasn't -- as opposed to Israel it
24 hasn't gained full membership in the United Nations,
25 correct?

29 (Pages 110 to 113)

Page 114

Page 116

1 A That's correct.
 2 Q So in -- okay.
 3 In your opinion what is the difference
 4 between statehood and being an independent state?
 5 A Independence can be taken in two
 6 different ways. It can mean that a state has
 7 complete control over its -- its own affairs. I
 8 think that's not the sense in which it -- it is
 9 appropriately used here because that would mean that
 10 a state under belligerent occupation, let's say
 11 Kuwait during the time it was occupied by Iraq, would
 12 not have been considered a state.
 13 I think what independence means is that
 14 the entity is -- is considered to be the sovereign in
 15 the territory. You might say in a legal sense that
 16 is -- it may not, in fact, be able to control, but
 17 nonetheless it is the entity that is accepted as
 18 being that state.
 19 Q Okay. And those were two differing --
 20 two differing definitions of independence, correct?
 21 A Yes, yes.
 22 Q And how does that differ from statehood?
 23 A Well, for statehood I think independence
 24 in the -- in the second sense is required, that an
 25 entity is recognized as being the legitimate

Page 115

1 authority of the -- of a particular territory. It's
 2 not necessary that it actually be in control if a
 3 foreign army comes in and takes it over.
 4 Q Okay. And where -- what's your basis
 5 for -- for these differing definitions and their
 6 relationship to each other?
 7 A Well, it's the state practice. It's the
 8 practice of states in accepting, you know, putative
 9 entities, putative states into the international
 10 community as states.
 11 Q But as we saw in the different treatment
 12 of Israel and Palestine, for example, there is not
 13 really any conformity as to state practice even; is
 14 that a fair characterization?
 15 A I am not sure what you mean by conformity
 16 of state practice.
 17 Q Well, you said that the -- you're drawing
 18 these definitions and the distinctions between them
 19 from state practice.
 20 A Uh-huh, uh-huh.
 21 Q But there's no way to look at state
 22 practice in a uniform way, right?
 23 A Yeah. There's no specific rule that says
 24 what the level of acceptance has to be. There is
 25 probably a norm that once you have very substantial

1 acceptance of an entity, that then it is a state
 2 under international law.
 3 Q And that's -- that's an international
 4 norm, correct?
 5 A Yes.
 6 Q And is that different from -- and is an
 7 international norm binding?
 8 A Yes.
 9 Q How so?
 10 A Well, the -- once an entity becomes
 11 sufficiently accepted as a state, it is considered to
 12 be a state and -- and that -- that is an
 13 international norm.
 14 Q Okay. And in your opinion Palestine has
 15 reached a sufficient level of acceptance to
 16 constitute a state, right?
 17 A Yes.
 18 Q But at the same time it has not gained
 19 full membership before the UN, right?
 20 A Yes.
 21 Q Okay, okay. So in your report you make
 22 three different sort of independent arguments that
 23 Palestine is a state, correct?
 24 A I would have to look to see what.
 25 Q Well, first, you make an argument that

Page 117

1 Palestine was a state beginning in the 1920s and
 2 continues as such to the present time, right?
 3 A Yes, that's correct.
 4 Q Okay. You also make an argument that
 5 Palestine fits the criteria for statehood under the
 6 international definition of statehood, right?
 7 A Yes.
 8 Q Okay. And you also make a third argument
 9 that Palestine qualifies as a state because it is --
 10 it has reached a level of acceptance among the
 11 international community such that it qualifies as a
 12 state, right?
 13 A Yes, uh-huh.
 14 Q I want to go through these -- those
 15 three. Do you make any other arguments in your
 16 report other than those three that Palestine
 17 constitutes a state?
 18 A Well, the basic argument is that it -- it
 19 has been accepted by the international community.
 20 That's the key argument. You don't really need the
 21 others.
 22 Q Uh-huh.
 23 A It is my opinion that Palestine became a
 24 state in the 1920s. If someone wants to disagree
 25 with my opinion on that, that would -- wouldn't mean

30 (Pages 114 to 117)

Page 118

1 Palestine is not presently a state. As well, I in
2 the report referred to the so-called Montevideo
3 criteria for statehood but I indicate that that is
4 not a test that is to be applied by a court but it's
5 a set of factors that may or may not be considered by
6 states in their determination to accept an entity as
7 a state. So the acceptance is the basic and really
8 the only necessary factor to make Palestine a state.

9 Q Okay. Are you aware that -- are you
10 familiar with Second Circuit case law -- U.S. Second
11 Circuit case law on Palestinian statehood?

12 A No.

13 Q Okay. Are you aware that the Second
14 Circuit has adopted the Montevideo -- I am not sure
15 how you pronounced it, Montevideo factors as the
16 relevant analysis for determining whether a state has
17 been recognized as such?

18 A I do recall those factors being
19 considered in -- I am not sure if it's the Second
20 Circuit or some other circuit in -- in the matter.
21 But I -- as I say, those are not the relevant --
22 that's not the relevant analysis for a court. As I
23 explained in my report, it's the acceptance of an
24 entity by the community of states and that community
25 of states may or may not utilize the Montevideo

Page 119

1 criteria in deciding whether to accept something as a
2 state.

3 Q Okay. And when you say it's not the
4 relevant analysis for courts, what courts are you
5 talking about?

6 A Well, any court. I mean, if you look at
7 the Permanent Court of International Justice back in
8 the 1920s where it had to decide whether Palestine
9 was a state then, it did not go through the factors
10 then that were a few years later put into the
11 Montevideo Convention. It looked at how Palestine
12 was accepted in the international community, and at
13 that time the primary factual point was the Lausanne
14 Treaty of 1923 where Palestine is -- is recognized as
15 a state by -- by the major powers that were in the
16 process of concluding the First World War.

17 Q Okay. What about other than the Court of
18 International Justice, are you referring also to
19 domestic U.S. courts when you say that the relevant
20 analysis is not the Montevideo factors?

21 A Yes. It's true for any decision making
22 body that has to determine whether an entity is or is
23 not a state. The essence is the acceptance of the
24 entity in the international community.

25 Q And is that your opinion, or is that

Page 120

1 based on those courts' opinions?

2 A Well, it's based on the Permanent Court
3 of International Justice opinion where it follows
4 that approach.

5 Q Any other more recent court decisions
6 that support your opinion or what the Court of
7 International Justice did in 1925?

8 A Well, yeah. The issue of Palestine
9 state, it hasn't come up again squarely before an
10 international court since that time.

11 Q What about U.S. courts?

12 A In U.S. courts it has, yeah, and the
13 decisions have been mixed. I cite one in the report,
14 the Kletter case, where a U.S. court said that
15 Palestine was a state. It didn't talk about the
16 Montevideo criteria. It didn't, in fact, talk about
17 its basis in general. It just simply --

18 Q Was the issue before the Kletter court
19 whether Palestine was a state?

20 A Well, yes. The fellow was saying I
21 didn't effectively make myself a national of another
22 state because it was Palestine where I made myself a
23 national and he was trying to say Palestine wasn't a
24 state, therefore, he still had U.S. citizenship and
25 the court said, no, pal, you gained nationality in

Page 121

1 another state, namely, Palestine.

2 Q But the issue before the primary holding
3 of the Kletter case was about nationality; it wasn't
4 about -- it wasn't about whether Palestine was a
5 state. It was about the plaintiff's nationality in
6 that case, right?

7 A Well, yes, that's how the case arose.

8 MS. MACHNES: If you guys
9 want to stop for lunch, we can now. I
10 can go a little further, but I am at a
11 point where we could take a break if we
12 want.

13 (Discussion off the record.)

14 (A lunch recess was taken at 12:02 p.m.)

15 EXAMINATION CONTINUED BY

16 MS. MACHNES:

17 Q Professor Quigley, earlier in the
18 deposition -- oh, actually, first, let me ask you
19 during the breaks have you discussed with counsel at
20 all the substance of your testimony?

21 A No.

22 Q No. Have you taken any advice from
23 counsel since this deposition started about your
24 testimony?

25 A No.

31 (Pages 118 to 121)

Page 122

Page 124

1 Q Okay. Earlier you cited that one of the
2 sources for your -- for support of your assertion
3 that Palestine was a state from the 1920s period
4 forward was the Treaty of Lausanne, correct?

5 A Yes.

6 Q What was that document?

7 A It was the treaty of -- of peace that
8 ended the First World War as between the European
9 allies and Turkey.

10 Q Okay. And who were the parties to that
11 treaty?

12 A I would say -- well, on one side was
13 Turkey. On the other side were the European allies.
14 And I'm not going to be able to name them all but
15 Britain, Italy, France, a couple of others.

16 Q Was the United States a party to that
17 treaty?

18 A No.

19 Q Okay. Does -- does the Treaty of
20 Lausanne mention the state of Palestine?

21 A It mentions the territories that are
22 being detached from the Ottoman Empire, the Turkish
23 Empire. It doesn't mention them by name, but they
24 were Syria, Iraq, and Palestine.

25 Q And in what context does it mention those

Page 123

1 territories?

2 A It mentions them -- it calls them states
3 that are detached from the Turkish Empire. And
4 one -- one mention is in relation to nationality, the
5 nationality of the persons who reside in those
6 territories. It says the states that are detached
7 from Turkey will -- will deal with -- with the
8 nationality. In fact, the people will become
9 nationals of those states and there's also a
10 provision on the -- on responsibility for the Turkish
11 national debt that would be assumed by these states
12 that are being detached. So in both those contexts
13 the entities that were being detached which are the
14 three I mentioned are referred to as states.

15 Q But it just refers to those entities
16 generally. It doesn't say that it's referring to all
17 of the entities or mention them specifically by name,
18 right?

19 A It does not mention them by name. It's
20 quite obvious that it's the -- they just say the
21 states detached and these are the ones that were
22 detached.

23 Q And -- okay. You also argue that
24 Palestine satisfies the international definition of
25 statehood, correct?

1 A Yes.

2 Q And how does it satisfy the international
3 definition of statehood?

4 A It is accepted by the community of states
5 as a state. I mean, it's accepted by -- by some --
6 by different states in different ways, but it's
7 actually accepted by I would say virtually all states
8 including Israel and including the United States.

9 Q Okay. What is in your words the
10 international definition of statehood?

11 A Well, it relates to the -- the hold on a
12 territory of a particular entity. I mean, I haven't
13 really thought about it in terms of defining
14 statehood as such, and you don't see it addressed
15 quite that way.

16 Q Well, in your report you rely on several
17 sources, not an international definition of
18 statehood, right?

19 A Yes.

20 Q And that's not limited to acceptance,
21 correct? It's a different analysis than whether a
22 state is accepted in the international community,
23 right?

24 A Well, the basic way in which an entity
25 becomes a state is that it becomes accepted by the

Page 125

1 existing states. That's probably -- I don't know if
2 you would call that a definition of statehood but
3 that's how an entity becomes a state.

4 Q We will turn to the acceptance part of
5 your -- of your report in a minute; but, right now, I
6 want to talk about the international definition of
7 statehood that you also discuss in your report which
8 is, for example, laid out in the Montevideo factors.
9 Do you recall that part of your report?

10 A Yes.

11 Q Okay. So what is the international
12 definition of a state according to the Montevideo
13 factors?

14 A Well, I mean, I wouldn't agree with the
15 assumption of your question that that provides the
16 definition of what entities are or are not states.
17 These are factors that are considered in determining
18 whether a particular state is going to accept a
19 punitive -- putative state as being a state. But
20 there's no indication that states necessarily have to
21 use these. But -- but to some extent they are
22 referred to by states when -- so they have some
23 relevance, but they're not definitive. That is, one
24 doesn't decide whether a particular entity is a state
25 by saying let's look at the Montevideo criteria.

32 (Pages 122 to 125)

Page 130

1 a state.

2 Q In your opinion is there a difference
3 between the word "control" and a government's
4 exercising "governmental functions"?

5 A Well, the government must exercise a
6 certain amount of control in order to exercise
7 function so I think the two are the same.

8 Q Okay. Focusing then on control, what is
9 meant by control in this -- in the Restatement's
10 definition or in the Montevideo Convention?

11 A I think it's not very well defined. I
12 mean, you have many entities in the world where the
13 government exercises only very vague control. Our
14 governments may have more control in some parts of
15 their territory than in other parts of their
16 territory. But that, you know, is not considered --
17 the fact that they don't have what you might call
18 complete control in the entirety of the territory
19 doesn't negate the existence of those entities as
20 states.

21 Q And in your opinion in your report you
22 state that the Palestinian Authority does exercise
23 control over the Palestinian population, right?

24 A Yes.

25 Q Okay. And -- and you said earlier that

Page 131

1 the PA has exercised control or has exercised
2 governmental function since 1994, correct?

3 A Yes.

4 Q Okay. Beginning in 1994, what sectors of
5 government did the PA begin to exercise control over?

6 A Do you mean functionally what sectors or
7 territorial? What --

8 Q Functionally.

9 A Functionally? Well, in certain parts of
10 the territory it exercised really all the basic
11 functions of government.

12 Q Okay. Which parts of the territory?

13 A Those are what then were defined in the
14 Gaza-Jericho Agreement of 1994 and the interim
15 agreement was 1995 where there's a disposition as to
16 different parts of the territory.

17 Q So which specifically are you --

18 A Well, I mean, you would have to go into
19 those to see. They use letters to label them and
20 each letter related to a certain part and portion of
21 the territory.

22 Q But it's your opinion that overall the
23 Palestinian Authority exercises sufficient control to
24 meet the requisite amount of control that's required
25 under a definition of statehood?

Page 132

1 A Well, yes, but one has to take into
2 account, of course, that the territory is under
3 belligerent occupation overall which means that it
4 can't exercise the kind of control that -- that
5 governments normally exercise.

6 Q Okay. In -- in area A specifically,
7 that's what you were referring to, letters?

8 A Yeah.

9 Q In area A specifically, is that one of
10 the specific areas of the territories that the
11 Palestinian Authority exercises all basic government
12 functions?

13 A Yes.

14 Q Okay. In your report you also say that
15 the Palestinian Authority exercises government
16 functions in many ways, right?

17 A Uh-huh, uh-huh.

18 Q What are -- what are those ways? Just
19 list as many as you can think of.

20 A Well, it has a police force. It has a --
21 you know, agencies that deal with -- with sanitation.

22 Q Okay. Anything else you can think of?

23 A There are probably others but.

24 Q Okay. Well, focusing on the 2000 to 2004
25 period specifically, did the Palestinian Authority

Page 133

1 have the ability to enact laws?

2 A Yes.

3 Q Okay. Did it have the ability to enforce
4 laws?

5 A Yes.

6 Q And had the power to tax?

7 A Yes.

8 Q You said it had the power to form a
9 police force?

10 A Yes.

11 Q Did it have the authority to arrest
12 Palestinians?

13 A Yes.

14 Q Okay. Did it have the power to set up
15 courts that would apply Palestinian law?

16 A Yes.

17 Q And, in fact, it had the authority to set
18 up an entire judicial system, right?

19 A Yes.

20 Q Okay. Did it have the power to prosecute
21 members of its population?

22 A Yes.

23 Q And that included the ability to
24 interrogate Palestinians, correct?

25 A Yes.

34 (Pages 130 to 133)

Page 134

Page 136

1 Q And to detain them?
 2 A Yes.
 3 Q Did it also have the ability to conduct
 4 trials generally?
 5 A Yes.
 6 Q And can you think of -- and you said deal
 7 with sanitation. Anything else you can think of that
 8 specifically were ways in which the Palestinian
 9 Authority exercised government functions during the
 10 2000 to 2004 period?
 11 A Oh, there probably are others but I can't
 12 think of those at the moment.
 13 Q It also had in the -- based on the 1993
 14 Declaration of Principles the general oversight over
 15 education, culture, health, social welfare, tourism,
 16 that sphere of life, correct?
 17 A Yes.
 18 Q So those were all ways in which the
 19 Palestinian Authority exercised control over --
 20 A Uh-huh.
 21 Q -- the Palestinian population, right?
 22 A Yes.
 23 Q And as a governing authority, did the PA
 24 have a responsibility to exercise these government
 25 functions?

Page 135

1 A Yes.
 2 Q And did the Palestinian Authority, in
 3 fact, exercise those government functions during the
 4 2000 to 2004 timeframe?
 5 A Yes.
 6 Q And it continues to exercise them to the
 7 present day, right?
 8 A Yes.
 9 Q Now, focusing on the PLO, what -- what
 10 types of government -- what types of government
 11 action is the PLO authorized to conduct?
 12 A Well, it conducts relations with the
 13 outside world basically.
 14 Q Okay. So does it have any -- does it
 15 have any responsibilities related to the Palestinian
 16 population specifically?
 17 A Well, it has created the PA --
 18 Q Okay.
 19 A -- and then the PA exercises functions.
 20 Q Okay. Can the PLO itself enact
 21 legislation?
 22 A It doesn't directly enact legislation
 23 itself, no.
 24 Q It doesn't. Does it have the ability to?
 25 A Well, yes, it does, yes. I am not clear

1 on exactly what areas it does or does not. For
 2 purposes -- for our purposes it doesn't really matter
 3 as between the two, so it's not something I directed
 4 my attention to in my report.
 5 Q What -- from where does the PLO drive its
 6 authority to enact legislation?
 7 A It derives authority the way any
 8 government derives authority, and when it gets you
 9 into the realm of political theory, how does that --
 10 Q Well, for example, the United States
 11 Congress acts based -- according to the United States
 12 Constitution. Is there a similar document?
 13 A Are you asking me about a document?
 14 Q Yeah.
 15 A I mean, ultimately the authority of any
 16 government comes from the people, whether the people
 17 actively want that government or whether they
 18 acquiesce in it reluctantly but that's ultimately
 19 where -- where the authority derives.
 20 Q So the Palestinian people have given the
 21 PLO the authority to enact legislation?
 22 A Yes, but, again, I mean, that authority,
 23 you know, can be expressed in simply by acquiescence
 24 but, yes.
 25 Q Okay. And why doesn't the PLO enact

Page 137

1 legislation, if it has the power?
 2 A Well, it's the PA that is -- is
 3 functioning as the -- the immediate governing
 4 authority in the West Bank and the -- so you find it.
 5 Q So has the PLO expressly delegated its
 6 power to enact legislation to the PA, for example?
 7 A Yes.
 8 Q Has it that done with respect to all of
 9 its powers of governance?
 10 A Well, it simply set it up as the
 11 governing authority, and then, you know, the PA takes
 12 the matter from there.
 13 Q Okay. Why doesn't -- why doesn't this
 14 relationship, I guess, between the PA and the PLO
 15 matter to your expert opinion?
 16 A Well, I mean, at one level you need to
 17 have a governing authority under the Montevideo
 18 criteria, and it doesn't matter exactly how that's
 19 parceled out.
 20 At another level when you have
 21 belligerent occupation, you don't need to have
 22 control at all so everything we're talking about here
 23 is not essential to Palestine being a state. I mean,
 24 there are many instances of belligerent occupation
 25 where the belligerent occupant exercises all powers,

35 (Pages 134 to 137)

Page 138

1 and the entity is still regarded as a state. If you
2 look at Kuwait during the time Iraq occupied it, the
3 entire government of Kuwait fled to outside the
4 country. They weren't there. They were not
5 exercising authority on the ground. So the --
6 this -- to say, well, you know, do they have to
7 exercise control to be a state, no, obviously not.

8 Q Okay. But in this case --

9 A But in this case there is considerable
10 exercise of control, yes.

11 Q Okay. So in your report and as you've
12 said through -- from the beginning of this
13 deposition, you take the position that the
14 determinative analysis of statehood is recognition or
15 acceptance as a state by other states in the
16 international community, right?

17 A I will use the term acceptance rather
18 than recognition. Recognition is a term that has a
19 particular significance that relates to this issue
20 but in a slightly different way, that is, states may
21 accept another entity as a state without according it
22 a diplomatic recognition.

23 If you are using recognition in your
24 question in the sense of diplomatic recognition, that
25 is a procedure that states engage in. If they do

Page 140

1 when an entity becomes a state. It's a factual issue
2 that comes out of international practice.

3 Q But we don't know what that level of
4 acceptance is, right?

5 A That's right. There's no definite, you
6 know, rule in terms of percentage of states or
7 percentage of the world's population or percentage of
8 the world's territory or anything of the sort. It's
9 just that when -- when it becomes sufficiently
10 general, then we say that an entity is accepted as a
11 state, and the fact that you -- you would have a few
12 that don't accept wouldn't be determinative in the
13 other direction if there are others that -- that
14 don't accept an entity as a state.

15 But you may have entities, of course,
16 that have accorded diplomatic recognition of the
17 entity which, as I say, doesn't mean that they regard
18 it as a state.

19 Q What does that mean practically that you
20 could have 1 nation that doesn't accept a state and
21 30 that do? What does that mean for that one state
22 that doesn't accept the -- that an entity constitutes
23 a state? What does that mean practically speaking?

24 A Practically it doesn't mean very much for
25 them. I mean --

Page 139

1 engage in it, if they recognize another entity, yes,
2 that would definitely mean they accept it as a state,
3 but they could accept it as a state without having
4 accorded diplomatic recognition. When Israel was
5 admitted to the United States, there were states that
6 voted in favor of admitting Israel as a state to the
7 United Nations even though they had not accorded
8 Israel diplomatic recognition so I'm just.

9 Q Okay. So diplomatic recognition is an
10 indication of acceptance, correct?

11 A Yes.

12 Q Okay. But it's not necessarily true that
13 acceptance requires diplomatic recognition.

14 A Correct.

15 Q Okay. What is your basis for -- what is
16 your basis for saying that the determining factor is
17 whether the international -- international community
18 accepts a state as such?

19 A Well, that's -- that's the way you see
20 states interacting, that is, once an entity gets to a
21 certain level of acceptance, that -- that is
22 considered determinative of the status of the state.
23 I mean, I suppose I base it on the practice of
24 states. There's not a document I can point to.
25 There is no like international treaty that tells you

Page 141

1 Q For who?

2 A I mean, for example, you would find
3 states that do not accept Israel as a state. There's
4 a group of states that takes that view. Does that
5 mean that Israel is not a state? No. I think there
6 is -- there is clearly sufficient generality of
7 acceptance of Israel as a state that one would say
8 the fact that you have some states that don't accept
9 Israel, that that's simply irrelevant.

10 Q Are there international scholars other
11 than yourself that do not agree that Palestine is a
12 state?

13 A Yes.

14 Q Okay. This is -- this is a complicated
15 issue on which reasonable minds can differ, correct?

16 A Well, some are less reasonable than
17 others. Those who disagree with me are less
18 reasonable.

19 Q Okay. But the disagreement is possible.

20 A Yes.

21 Q So as we've established, there is one way
22 that we know when an entity is accepted as a state
23 and that's if it's extended diplomatic recognition,
24 right?

25 A Yes.

36 (Pages 138 to 141)

Page 142

1 Q What are the other ways that we can tell
2 an entity has been accepted as a state when
3 diplomatic recognition is not present?

4 A Well, it could be an expression in some
5 kind of international document that the entity is a
6 state such as the resolution of November 29, 2012.
7 It could be a vote in favor of admitting an entity to
8 the United Nations which would be true, as I
9 mentioned, of some states that voted for Israel's
10 admission to the United Nations even though they
11 hadn't accorded diplomatic recognition. It could be
12 interaction with that entity in a way that is
13 inconsistent with a view that the entity is not a
14 state.

15 In fact, when the Declaration of
16 Principles was concluded in 2003 and in that
17 connection there were expressions on the Israeli side
18 and the Palestinian side of recognition of each
19 other, that to my mind bespoke an acceptance by
20 Israel that Palestine was a state. That was also the
21 view of Benjamin Netanyahu at the time who was the
22 member of the Knesset and opposed that declaration.
23 He criticized it on the grounds that Israel was
24 accepting Palestine as a state.

25 So you can have a variety of kinds of

Page 143

1 interaction. Or under the Declaration of Principles,
2 the negotiation of borders, the fact that Israel
3 agreed that it was going to negotiate borders with --
4 with the PLO was an acceptance that the PLO was
5 representing a state because you don't negotiate
6 borders with -- with the, you know, the Parent
7 Teacher Association. You negotiate borders with a
8 state, or you have the road map of 2003 where to my
9 mind the United States expressly stated that it
10 considered Palestine to be a state because it said
11 that within a few weeks the United States would agree
12 with -- the United States and the other major powers
13 would promote the diplomatic recognition of Palestine
14 as a state and that could not have been deposited in
15 that fashion if the United States didn't consider
16 that Palestine was -- was a state.

17 I think the confusion sometimes comes
18 because there are entities that want to encourage the
19 Palestinians and Israelis to negotiate, and so if you
20 ask at one level, they'll say, well, the statehood
21 will come out of that but just the fact of
22 encouraging them to negotiate means that there's
23 effective acceptance as a state.

24 Q Okay. So those are some of the ways --
25 some of the indications that an entity is accepted as

Page 144

1 a state even if there is no diplomatic recognition.

2 A Correct. Diplomatic recognition is
3 considered to be a discretionary matter with the
4 state so that if -- if a state, you know, doesn't
5 like things that another state does, then they will
6 withhold recognition. And here I think you find some
7 states withholding recognition of Palestine because
8 they think that's a way of pressuring it to come to
9 an arrangement with Israel.

10 Q One of the -- one of the ways that you
11 just mentioned that we know an entity is accepted as
12 a state even though there's no diplomatic recognition
13 necessarily is a resolution to be invited into the
14 UN, right?

15 A As a member state you mean. To be --
16 when you say "invited."

17 Q Those were your words but, sure, as a
18 member state.

19 A Well, it could be invited as a member
20 state or invited in some other capacity but, yes.

21 Q Okay. And, in fact, in your report and
22 earlier we've talked a bit about the 2012 General
23 Assembly resolution in which the General Assembly
24 voted on the question of Palestine, right?

25 A Yes.

Page 145

1 Q And what was -- what did the General
2 Assembly vote on in that resolution?

3 A Well, it said that the -- the mission of
4 Palestine, the observer mission, which had been in
5 existence for some time at the United Nations, was
6 the -- was the mission of a state.

7 Q Could you repeat that? Sorry.

8 A It said the mission of Palestine, the
9 observer mission, was the -- was the mission of a --
10 of a state.

11 Q Did it ultimately vote that it would
12 recognize Palestine as a nonmember observer state?

13 A Well, the term "recognize" isn't quite
14 appropriate here because it confuses with "diplomatic
15 recognition."

16 Q Okay. Did it ultimately accept Palestine
17 into the UN as a nonmember observer state?

18 A Yes.

19 Q Okay. What is a nonmember observer
20 state?

21 A It would be an entity that has observer
22 status at the United Nations and which is moreover
23 considered to be a state, although not a member of
24 the organization.

25 Q To be a member, to have formal membership

37 (Pages 142 to 145)

Page 146

1 in the UN, you have to be a state, correct?

2 A Yes.

3 Q So if being accepted as a nonmember
4 observer state is equivalent to being a state, how is
5 a nonmember observer state any different than being a
6 full member of the UN?

7 A Well, it's -- it's not membership in
8 terms of the prerogatives, although it comes rather
9 close to it. But it would mean that the entity
10 doesn't vote on resolutions in the way a member state
11 would vote on resolutions. It doesn't contribute to
12 the expenses of the organization the way a member
13 would.

14 Q Okay. And if -- if the UN wanted to
15 admit Palestine as a full member in which it only
16 does for states, it could vote to do so also,
17 correct?

18 A Yes.

19 Q And, in fact, in September of 2011,
20 the -- the government of Palestine submitted a bid to
21 the UN for full membership, correct?

22 A Yes.

23 Q And do you cite to that in your report?

24 A No, I didn't.

25 Q Why not?

Page 147

1 A Well, I mean, that would be another way
2 in which an expression could be made of acceptance of
3 Palestine as a state but the General Assembly did it
4 in a different way and that, I think, is what is
5 determinative on the -- in -- as providing a very
6 significant expression of international acceptance of
7 Palestine. Certainly had there been acceptance into
8 membership that would have been another such
9 expression.

10 Q What happened with the September, 2011,
11 bid for membership?

12 A It was referred to the Security Council,
13 and to date the Security Council has not taken any
14 action. It hasn't voted against; it hasn't voted in
15 favor.

16 Q And is that a significant expression of
17 international views on Palestine similar to what you
18 said was significant expression in the 2012
19 resolution?

20 A Well, if you had some expression from the
21 Security Council that it was refusing to act because
22 it didn't consider the entity to be a state, then
23 that would be relevant. Here you have not had any
24 such expression by the Security Council. The
25 Security Council has merely, you know, put the matter

Page 148

1 on hold. It may come up again; it may not come up
2 again. But given the fact that the General Assembly
3 went ahead and adopted this resolution suggests that
4 the overwhelming majority of the membership in the
5 United Nations regards Palestine as a state.

6 Q And in the meantime while the Security
7 Council put the 2011 bid on hold, the state -- the
8 government -- the Palestinian government approached
9 the General Assembly and made a bid for admission as
10 a nonmember observer state, correct?

11 A I wouldn't use the term "admission" but
12 made a request, let's say, that the General Assembly
13 adopt a resolution, you know, specifying that
14 Palestine is a state.

15 Q So the government of Palestine initiated
16 that while the Security Council put the 2011 bid on
17 hold?

18 A Yes.

19 Q Okay. And as -- as an expert on
20 international law, how do you -- how would you
21 characterize General Assembly resolutions?

22 A Well, General Assembly resolutions have a
23 certain status under the charter of the United
24 Nations. General Assembly resolutions do not make
25 law. General Assembly resolutions are often taken as

Page 149

1 an expression of the views of the international
2 community on a particular subject, and in particular
3 when a state votes a particular way on a resolution,
4 that's an indication of its view on an issue.

5 Q But it's not binding law in any way.

6 A The resolution itself is not binding law
7 except to the extent that this resolution does relate
8 to the status of the Palestine mission at the UN so
9 in that sense it is binding, that that makes the
10 observer mission at the UN the observer mission of a
11 state.

12 Q So you're saying it's binding; you're
13 saying General Assembly resolutions are binding on
14 the UN?

15 A Yes.

16 Q But other than that they are not binding?

17 A Well, the General Assembly can't create
18 law. It can't say, you know, we consider such and
19 such to be required under international law.

20 Q On the other hand the Security Council
21 has different authority within the UN?

22 A Well, the Security Council doesn't make
23 law but it -- it has a different realm of operation,
24 in particular relating to war and peace. With regard
25 to admission of members, at least the way it's

38 (Pages 146 to 149)

Page 150

1 presently construed, they both have a role, a role
2 that -- that is determinative so, for example, when
3 the General Assembly admits a state as a member, you
4 know, that is determinative as to the status of that
5 entity within the organization.

6 Q Okay. So can the UN, whether it be
7 through the General Assembly or the Security Council,
8 make law in any way outside of the realm of for
9 itself?

10 A They don't make law. I mean, here we are
11 dealing with an issue of fact. It's a question of
12 whether Palestine is accepted as a state. And when
13 you get a large number, whatever the number was on
14 that resolution, voting in the affirmative, it means
15 that those -- that that number of states are saying
16 that they consider Palestine to be a state so you
17 don't really need to talk about --

18 Q But it's not binding, for example -- the
19 number that voted for it, that -- the fact that that
20 was the majority and that resolution passed, it's not
21 binding on any state that voted against it, right?

22 A Well, it's not binding on the states that
23 voted against it, but when you have an overwhelming
24 expression of sentiment in favor of an entity being a
25 state, then it does -- it becomes a state. And you

Page 151

1 have here --

2 Q How so?

3 A Well, that's how an entity becomes a
4 state is that other states consider it to be so. And
5 here you have not only the number that voted in favor
6 of this resolution, you've got others that have
7 accorded diplomatic recognition that didn't vote in
8 favor. When you add it all together, you've got
9 about some 160 states that have -- have in a formal
10 way expressed their acceptance of Palestine and
11 that's out of 190 or so in the international
12 community.

13 Q And they expressed their acceptance of
14 Palestine as a nonmember observer state, right?

15 A Well, but the critical point is they
16 accepted it as a state.

17 Q Professor Quigley, when I ask a yes or no
18 question, could you please answer it "yes" or "no"?

19 A What is the yes or no question?

20 Q The question is they -- that number of
21 states that you just cited to, 160, they voted to
22 accept Palestine as a nonmember observer state,
23 right?

24 A It wouldn't be 160. I was adding another
25 group of states.

Page 152

1 Q The overwhelming number of states that
2 voted to accept Palestine voted to accept Palestine
3 as a nonmember observer state, correct?

4 A Yes.

5 Q Okay. And we have the 2011 bid that is
6 pending before the Security Council, correct?

7 A Uh-huh.

8 Q Have there been any other bids for
9 membership to the UN made by the government of
10 Palestine prior to September, 2011?

11 A Not to the United Nations but there have
12 been to specialized agencies of the United Nations
13 which also requires statehood as a criterion.

14 Q Okay. And what was the -- first of all,
15 did you cite those in your report?

16 A I don't know if I mentioned that, but I
17 don't think I mentioned the fact that Palestine
18 applied to -- to UNESCO for membership, that's a
19 specialized agency, and that it was admitted in I
20 believe 2011 and that too is an organization that
21 requires statehood as a condition of membership.

22 Q That was in 2011?

23 A Yes.

24 Q And what is that organization?

25 A The UN Economic, Social, and Cultural

Page 153

1 Organization, it's a specialized agency of the United
2 Nations.

3 Q Okay. And how did the U.S. vote on that
4 resolution?

5 A The U.S., the U.S. voted against.

6 Q Going back to the 2012 General Assembly
7 resolution, how did the U.S. vote on that resolution?

8 A In the negative.

9 Q Okay. How many other states rejected it?

10 A Let's see, nine, nine total.

11 Q And how many states abstained from
12 voting?

13 A 41.

14 Q Okay. So is it fair to say that at least
15 50 states in the UN voted against accepting Palestine
16 as a nonmember observer state?

17 A Yes, but that doesn't mean they don't
18 consider Palestine to be a state. Many of them were
19 of the opinion that they thought they would encourage
20 negotiations if they -- if Palestine were not given
21 this status. So the fact that they abstained or
22 voted in the negative doesn't necessarily mean that
23 they don't consider Palestine to be a state.

24 Q Why is that?

25 A Well, it just -- states have their own

39 (Pages 150 to 153)

Page 154

1 reasons for voting on these things. And some of them
2 expressed the view that the -- that they thought it
3 would put more pressure on Palestine to come to terms
4 with Israel if it were not accorded this status at
5 the United Nations so their vote was not based on
6 a -- on their view that Palestine was not a state.

7 Q Given all of these other political
8 motivations or other reasons for voting on the
9 resolutions, the resolution itself doesn't actually
10 tell us whether or not Palestine is accepted as a
11 state, right?

12 A I disagree with that. I mean, it does
13 state as a fact that Palestine is a state. If the
14 observer mission is the observer mission of a state,
15 then they are saying that Palestine is a state.

16 Q Well, it does actually say that Palestine
17 is a nonmember observer state, correct?

18 A Yes.

19 Q So is your previous answer affected in
20 any way?

21 A No. I mean, that's what they were
22 voting. You have to have regard for the way in which
23 this arose. I mean, you have a mission of Palestine
24 at the United Nations. It's called an observer
25 mission. It's an observer so it has the status of

Page 155

1 observer. But up until the time of this resolution
2 there hadn't been anything formal that indicated of
3 what Palestine is an observer. Is it an observer
4 of -- of a nongovernmental organization? Is it an
5 observer of a state? And here they are making the
6 specification that the observer mission is the
7 observer mission of a state.

8 Q Okay. So it wasn't voting to decide that
9 Palestine should be accepted as a state, right?

10 A Well, they are making a factual statement
11 that Palestine is a state.

12 Q They are making a factual statement that
13 Palestine is a nonmember observer state, right?

14 A Yes.

15 Q Where --

16 A It is a state, yeah.

17 Q Where in the resolution does it say that?

18 A "Decides to accord to Palestine nonmember
19 observer state status."

20 Q Okay. And in your opinion that's the
21 same as a state status?

22 A It says "state status," the word
23 "state" --

24 Q But it is qualified by "nonmember
25 observer status," so I am asking you if a nonmember

Page 156

1 observer status is the same as state status in the
2 UN.

3 A Well --

4 MR O'TOOLE: I am going to
5 object. The question was based on not
6 the language of the resolution.

7 A You said "nonmember observer status."

8 It's not "member state status" so we are going around
9 in this --

10 Q So you are saying there is no difference
11 between a nonmember observer state status and a full
12 state status in the UN.

13 A Well, I don't accept the premise of your
14 question. I don't know what you mean by full -- what
15 was full status? Do you mean member status? It
16 certainly isn't considering it to be a member of the
17 organization.

18 Q What in a resolution that votes on
19 whether an entity is a nonmember observer state says
20 that that nonmember observer state is recognized as a
21 state?

22 A Well, again, I have to object to the term
23 of "recognize" in this context, but if the
24 organization is saying -- at least those who voted in
25 favor are saying that -- that the status of Palestine

Page 157

1 is that of an observer state, they are saying that it
2 is a state.

3 Q Okay. So in your opinion the
4 qualification "nonmember observer" has no meaning.

5 A It does not derogate from the fact they
6 are making a factual statement that they consider
7 Palestine to --

8 Q That's not what I am asking you. I am
9 asking does the qualifier "nonmember observer" in
10 this resolution have any meaning to you? "Yes" or
11 "no."

12 A Well, it has meaning in terms of what
13 Palestine's observer mission is at the United
14 Nations. It doesn't have any significance with
15 regard to a statement about Palestine being a state.

16 Q Okay. By the way -- we did that one
17 already. Strike that.

18 You mentioned of the 50 states that voted
19 to either reject or to abstain from voting on that
20 resolution, that they may have had political reasons
21 for those rejections or abstentions, correct?

22 A Yes.

23 Q Does that mean necessarily that those
24 states accept that Palestine is a state?

25 A Well, by their abstention or negative

40 (Pages 154 to 157)

Page 158

1 vote, you -- the abstention or negative vote does not
2 indicate an acceptance of Palestine as a state,
3 though some of those states accept Palestine in other
4 ways, but the vote on the vote itself, the negative
5 vote or the abstention, doesn't so indicate.

6 Q Okay. Another way you mentioned that a
7 state that has not extended diplomatic recognition
8 can indicate that it accepts an entity as a state is
9 through actions that are inconsistent with not
10 recognizing that entity as a state, right?

11 A Uh-huh, uh-huh.

12 Q And specifically you mentioned with
13 respect to the United States the 2003 road map,
14 correct?

15 A Yes.

16 Q Okay. What is this 2003 road map?

17 A Well, it's a document that was drafted by
18 the major powers as to steps that should be taken
19 that could resolve the overall conflict,
20 Israeli-Palestinian Conflict.

21 Q And you say this document -- in this
22 document the United States accepts that Palestine is
23 a state.

24 A Yes.

25 Q Okay. Where in the document do you?

Page 159

1 A Well, it doesn't say it in so many words,
2 but the document talks about phases that shall be
3 carried through in order to move in the direction.
4 And the first phase, this was the end of April, 2003,
5 it was concluded, and the first phase was to be
6 certain measures that would reduce tension between
7 the parties.

8 The second phase was that -- that was to
9 begin within a few weeks after the beginning of the
10 first phase that -- that quartet members, quartet is
11 the overall group enacting this doc -- or signing
12 onto this document, that they would promote
13 international recognition of Palestinian state
14 including possibly UN membership.

15 So they were formulating a document in
16 April of 2003 that contemplated that by June of 2003,
17 the United States along with Russia, all the European
18 powers, would be asking all states of the world to
19 recognize Palestine as a state. So as of April of
20 2003, they are saying we're prepared as of June,
21 2003, to be encouraging all states in the world to --
22 to recognize, to accord diplomatic recognition to
23 Palestine as a state.

24 And it seems to me they could not have
25 done that unless they thought that Palestine was a

Page 160

1 state because Palestine wasn't going to kind of
2 change anything. It wasn't going to become anything
3 different within -- between the end of April and June
4 of 2003.

5 Q Okay. But this entire document, this
6 entire road map, envisions a series of possibilities,
7 right? It's creating a road map.

8 A Yes.

9 Q A possible road map.

10 A Uh-huh.

11 Q And as you say in your report, it
12 "envisions possibility" of establishing a Palestinian
13 state.

14 A I wouldn't say of establishing a
15 Palestinian state. I would say of promoting
16 diplomatic recognition of Palestine as a state.

17 Q Okay. So if -- if it envisions -- if
18 this road map envisions the possibility of promoting
19 diplomatic recognition of Palestine, how does that
20 mean that it is currently in that statement accepting
21 that Palestine is a state?

22 A Well, they were saying that by -- this is
23 the end of April of 2003. They were saying that
24 we're prepared if -- if certain things happen
25 between -- over the next few weeks, we're prepared to

Page 161

1 encourage all states to accord diplomatic recognition
2 to Palestine. I don't see how they could have --
3 have said that if they didn't think that what they
4 would be encouraging diplomatic recognition of was
5 not a state.

6 Q Well, as you just said, that was
7 dependent on certain contingent --

8 A Uh-huh.

9 Q -- if clauses, correct?

10 A Yes.

11 Q Okay.

12 A But those if clauses didn't relate to
13 Palestine status.

14 Q Okay. What did they relate to?

15 A This related to reduction of violence.

16 Q Okay. So the text of the 2003 road map
17 doesn't expressly recognize -- doesn't expressly
18 accept Palestine as a state; is that right?

19 A That would be correct.

20 Q Okay. Similarly you said the 1993
21 Declaration of Principles between Israel and the
22 government, the Palestinian government, was another
23 indication that Israel was impliedly recognizing or
24 impliedly accepting the state of Palestine, right?

25 A Yes.

41 (Pages 158 to 161)

Page 162

1 Q And would the same possible reasoning
2 apply to that scenario that we just went through with
3 the 2003 road map?

4 A I'm sorry. I'm afraid I don't follow.

5 Q Just because the Israeli government says
6 it is possible in the future that Palestine may be
7 accepted as a state, does that mean that at that
8 moment in the present Israel is accepting Palestine
9 as a state?

10 A Well, the road -- the declaration itself
11 doesn't say that Israel is perhaps in the future
12 going to accept Palestine as a state. The
13 Declaration of Principles doesn't address the
14 question of statehood. It's just that by entering
15 into an arrangement where you would agree to discuss
16 borders and where you have the subsidiary documents
17 that were exchanged in September of 2003 of mutual
18 recognition, you have -- this was, as I say,
19 Mr. Netanyahu's view, you have an acceptance of each
20 other as being a state.

21 Q But that document, as you just said,
22 doesn't even address the question of Palestinian
23 statehood, correct?

24 A It does not and in particular it doesn't
25 say that statehood is one of the things to be

Page 163

1 determined in the negotiations between the parties,
2 that is, that was not one of the agenda items. It
3 was -- I think he was saying -- it was presumed that
4 the two entities would be states.

5 Q Presumed by who?

6 A By both parties.

7 Q Okay. But was it presumed by the United
8 States?

9 A The United States was not quite a
10 signatory but -- but -- well, actually did sign on as
11 something of a -- you might say a witness to the
12 document. So to that extent I suppose you would say
13 the United States as well was accepting the notion
14 that Palestine was a state.

15 Q Or we're presuming that the United States
16 accepted it through its role as a witness?

17 A Yes, that it was signing onto a document
18 that presumed statehood.

19 Q It didn't sign that document, did it?

20 A No. It signed as kind of, oh, United
21 States and I think Russia and government. Some
22 others signed it as kind of -- it was a bit more than
23 witnesses. It was more as that they were all
24 encouraging the parties to do what was specified in
25 the document.

Page 164

1 Q They were encouraging the parties to try
2 to resolve decades of fighting and violence and
3 struggle, correct?

4 A Yes. But not to resolve the question of
5 statehood, yeah.

6 Q Okay. What other sources do you cite in
7 your report to support your assertion that the United
8 States is part of the international community that
9 accepts Palestine as a state?

10 A Well, for the United States there would
11 be the road map. There would be the encouragement
12 of --

13 Q Other than what we've just discussed.

14 A Agreeing on borders -- I'm -- state the
15 question again, please.

16 Q Other than what we've just discussed what
17 sources do you cite in your report to support your
18 assertion that you -- the United States is part of
19 the international community that accepts Palestine as
20 a state?

21 A Well, I also mention the situation back
22 in 1932 when the Secretary of State of the United
23 States expressed to Britain the view of the United
24 States that Palestine is a state.

25 Q Did you cite to any sources more recent

Page 165

1 than 1932 where any member or any security who was --
2 any security member of the United States said that
3 Palestine was a state?

4 A When you say "any security member" --

5 Q What term did you use? Who was --

6 A The Secretary of State.

7 Q Secretary of State, did you cite to any
8 more recent document or any other statement by any
9 security of state -- Secretary of State, Secretary of
10 State, sorry, that made any type of declaration on
11 that Palestine was a state? Did you cite any such
12 sources in your report?

13 A No. I don't think there have been others
14 since then. I mean, it's the kind of thing that
15 comes into -- that occurs only when there's an
16 occasion that calls for it, and in the 1932 there was
17 an occasion because it related to tariffs that might
18 have been charged on United States' goods going into
19 Britain and so there was a reason that there needed
20 to be an expression by the United States.

21 Q So --

22 A So the fact that the next Secretary of
23 State didn't say anything comparable doesn't really
24 negate what was said by the earlier Secretary of
25 State.

42 (Pages 162 to 165)

Page 166

1 Q So it's your opinion that no member --
2 strike that.

3 It's your opinion there has been no
4 occasion since 1932 for a member of the Executive
5 Branch of the United States government to speak on
6 whether Palestine is a state?

7 A Well, since 1932 that particular -- the
8 occasion for stating it hasn't arisen so --

9 Q So the answer is "no"?

10 A But -- but I -- I would really have to
11 check before answering that one way or the other
12 because --

13 Q You didn't check before writing this
14 report?

15 A Well, there might be others. I mean,
16 there's a huge amount of diplomatic intercourse that
17 goes on, you know, at the UN but let -- I will say I
18 haven't found any that would -- would be in that
19 direction.

20 Q And you didn't cite any in your report.

21 A I did not, no.

22 Q Okay. Are there any other sources that
23 you cite in your report to support the conclusion
24 that the United States is part of the international
25 community that accepts Palestine as a state?

Page 167

1 A Well, going back to the 1920s, the United
2 States was not part to the Treaty of Lausanne, but it
3 accepted the disposition that was found in the Treaty
4 of Lausanne, in particular with issues of -- of
5 citizenship, that there was a Palestine citizenship,
6 and people who had Palestine passports were allowed
7 to enter the United States on Palestine passports
8 so -- so there was acceptance by the United States in
9 that way.

10 Q That was the 1923 treaty?

11 A Yes.

12 Q And the United States wasn't party to
13 that treaty, right?

14 A It wasn't a party, but I'm saying that it
15 accepted the disposition that you found in the 1923
16 treaty.

17 Q How so?

18 A By its practice because one of the
19 provisions of the Treaty of Lausanne, as I mentioned,
20 was that there would be a Palestine nationality, and
21 the government of Palestine began to issue passports
22 in the name of Palestine and if someone came to --
23 arrived at New York with one of these passports, you
24 know, they were allowed in.

25 Q Okay. By accepting a nationality's

Page 168

1 passport, did the United States declare that it
2 recognized Palestine as a state?

3 A I think so. I mean, if I come to the
4 border of the United States and I have a passport,
5 you know, signed by the Beatles, I mean, they are not
6 going to let me in.

7 Q Okay. That was in 1923, right?

8 A This was all during the period following
9 1923.

10 Q Do you know how recently the United
11 States has accepted any Palestinian passport?

12 A Let's see, well, passports would have
13 been issued for residents of Gaza after 1948 by a
14 governing authority that was under the belligerent
15 occupation of Egypt and those would have been
16 accepted. Those were issued in the name of
17 Palestine, but the governing authority by way of
18 belligerent occupation was Egypt but those would have
19 been accepted by the United States.

20 Q Do you know they were accepted?

21 A Yes, yeah.

22 Q 1948?

23 A Yeah, up until 1967.

24 Q 1967 is when the United States started
25 rejecting Palestine passports?

Page 169

1 A No. It would be when they stopped being
2 issued. I don't -- I will acknowledge I don't know
3 for sure how late those were accepted or whether they
4 are still being accepted.

5 Q Okay. Other than what we've already
6 discussed, so there's no need to repeat the sources
7 we've already gone through, do you cite any other
8 authority in your report to support your position
9 that the United States accepts Palestine as a state?

10 A I think we've gone over the -- those
11 instances that I cite.

12 MS. MACHNES: Okay. I
13 think we can take a break now.
14 (Recess taken.)

15 Q Professor Quigley, other than Palestine
16 are you aware of any other entities that have a
17 nonmember observer state status in the United
18 Nations?

19 A The Vatican.

20 Q That's the Holy See, right?

21 A Yes.

22 Q Does the fact that the Holy See has
23 nonmember observer state status mean that the
24 international community recognized the Holy See as a
25 state -- or accepts?

43 (Pages 166 to 169)

<p style="text-align: right;">Page 170</p> <p>1 A Thank you.</p> <p>2 Q Accepts the Holy See as a state?</p> <p>3 A Yes.</p> <p>4 Q So you believe that the international</p> <p>5 community accepts the Holy See as a state?</p> <p>6 A Yes.</p> <p>7 Q Are you aware of any other entities that</p> <p>8 have nonmember observer state status?</p> <p>9 A No.</p> <p>10 Q And is that in your report?</p> <p>11 A I don't think I mentioned that -- these</p> <p>12 facts in the report.</p> <p>13 Q Okay. I mean, specifically the number of</p> <p>14 entities -- or number of entities in the UN that have</p> <p>15 nonmember observer status.</p> <p>16 A No. I didn't consider that relevant.</p> <p>17 Q Okay. It's your position that -- that</p> <p>18 acceptance of a state as being a state is the</p> <p>19 determinative factor based on state practice, right?</p> <p>20 A Yes.</p> <p>21 Q And you say that the practice of states</p> <p>22 is the most important way that we can tell that</p> <p>23 acceptance is the determinative analysis of statehood</p> <p>24 under international law, right?</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 172</p> <p>1 other types of analyses on other scholars; is that</p> <p>2 what you're saying?</p> <p>3 A Well, I base it on my analysis of how</p> <p>4 states actually operate and on how other scholars</p> <p>5 analyze how states operate.</p> <p>6 Q Did you consider other scholars that</p> <p>7 disagree with your prioritization of how to analyze</p> <p>8 statehood?</p> <p>9 A I've seen some. I haven't analyzed -- or</p> <p>10 seen all of them so I don't know the totality of</p> <p>11 them.</p> <p>12 Q Did you cite to any in your report?</p> <p>13 A I didn't, no.</p> <p>14 Q Okay. Other than James Crawford do you</p> <p>15 have any -- can you list any others?</p> <p>16 A There really haven't been others who have</p> <p>17 done extensive analysis. I mean, you find lawyers</p> <p>18 that have stated an opinion on this issue but -- but</p> <p>19 not many that have done what I would call extensive</p> <p>20 analysis.</p> <p>21 Q Where have lawyers stated their opinion?</p> <p>22 A I've seen articles by authors whose names</p> <p>23 I don't recall.</p> <p>24 Q Okay. And those aren't cited in your</p> <p>25 report, right?</p>
<p style="text-align: right;">Page 171</p> <p>1 Q And that the practice of states is more</p> <p>2 important than the Montevideo factors, for example?</p> <p>3 A Well, the Montevideo factors are factors</p> <p>4 that states can take into account, but it's</p> <p>5 ultimately states that take those into account.</p> <p>6 Q Okay. And that's your opinion, right?</p> <p>7 A Yes.</p> <p>8 Q Is that -- is that an established way of</p> <p>9 prioritizing the analysis of statehood under</p> <p>10 international law?</p> <p>11 A I think it is, yes.</p> <p>12 Q How do you -- based on what?</p> <p>13 A That's what you find, you know, others</p> <p>14 saying. Some may differ about how extensive the</p> <p>15 practice has to be but this is the analysis that you</p> <p>16 generally find.</p> <p>17 Q Who are the others that you are referring</p> <p>18 to?</p> <p>19 A Oh, there would be James Crawford who has</p> <p>20 written a book on states that would go through this.</p> <p>21 He probably has a higher standard than I do for</p> <p>22 what -- how much the acceptance has to be, but it's a</p> <p>23 matter of degree. It's not a huge difference.</p> <p>24 Q So you're basing the pri -- so you're</p> <p>25 basing this prioritization of state practice over</p>	<p style="text-align: right;">Page 173</p> <p>1 A No.</p> <p>2 Q So earlier we discussed all of the</p> <p>3 sources that you cited to support your assertion that</p> <p>4 the United States implicitly recognizes or accepts</p> <p>5 Palestine as a state, right?</p> <p>6 A Yes.</p> <p>7 Q And coming to this conclusion did you</p> <p>8 consider the modern position of the United States</p> <p>9 Executive Branch on whether Palestine is a state?</p> <p>10 A Yes.</p> <p>11 Q Do you cite to that in your report?</p> <p>12 A No.</p> <p>13 Q So what other sources that you didn't</p> <p>14 cite in your report from the Executive Branch of the</p> <p>15 United States tell you that the United States tacitly</p> <p>16 recognizes or accepts Palestine as a state?</p> <p>17 A When I say I haven't cited, I mean, we</p> <p>18 did talk about the road map which to me is an</p> <p>19 indication by the United States that it does accept</p> <p>20 Palestine as a state and that's -- that's very</p> <p>21 recent. That's within the last 10 years.</p> <p>22 Q And we established that that document</p> <p>23 contemplated the possibility of Palestine being</p> <p>24 accepted as a state. It did not explicitly accept</p> <p>25 Palestine as a state, right?</p>

44 (Pages 170 to 173)

Page 174

Page 176

1 A It impliantly accepted Palestine as a
2 state and looked to the future to promoting
3 diplomatic recognition of what was assumed in the
4 document to be a state, namely, Palestine.

5 Q Okay. So we established that it's your
6 opinion that document impliantly accepts Palestine as
7 a state.

8 A That's right.

9 Q Other than that did you consider other
10 sources from the Executive Branch of the United
11 States that aren't in your report and that we haven't
12 already discussed where the Executive Branch of the
13 United States declares its position on Palestine as
14 being a state?

15 A The only one I can think of would be the
16 statement made by the U.S. Representative after the
17 vote in the General Assembly where she said Palestine
18 was not a state or that -- she didn't say Palestine
19 was not a state. She said the resolution didn't
20 indicate that. That was her view. But that's the
21 only one I can think of and I did not cite that.

22 Q Do you know who -- do you know who that
23 U.S. Representative was?

24 A Ms. Rice.

25 Q Okay. And she made that statement after

1 doesn't necessarily mean that the United States
2 doesn't accept Palestine as a state.

3 Q Okay. So it's your position that the
4 United States' actions are consistent only with
5 accepting that Palestine is a state?

6 A Yes.

7 Q Okay. And it's your opinion that a U.S.
8 Representative's expression as recently as 2012 that
9 Palestine was not accepted as a state is not
10 important enough to include in your report about
11 whether Palestine is a state for an expert report
12 that is pending before a United States court?

13 A Well, I mean, the issue is the acceptance
14 by states generally.

15 Q That's the issue for --

16 A The fact that you have an expression by
17 the United States, whereas, I say that expression is
18 inconsistent with the practice, I mean, I don't know,
19 you know, what -- you know, whether you can take that
20 as any -- anything of great moment.

21 Q Okay. I think you also just said that
22 U.S. courts are supposed to decide under
23 international law; is that correct?

24 A Yes, uh-huh.

25 Q Do you recognize the difference between

Page 175

Page 177

1 the 2012 UN General Assembly resolution?

2 A Yes, uh-huh.

3 Q Why didn't you cite that statement in
4 your report?

5 A Because it's so overwhelming what you get
6 from the way this was handled at the General
7 Assembly, that that, you know, simply isn't
8 significant.

9 Q Well, you are aware that this case is
10 pending before a United States court, right?

11 A Yes.

12 Q And that the United States is governed by
13 its own positions on these things, right?

14 A Yes. But a court is supposed to decide
15 an issue of this on the basis of -- of international
16 law. I mean, it's not supposed to decide solely
17 based on what the U.S. government says and what --
18 what a particular official says on a particular day,
19 you know, isn't necessarily definitive as to whether
20 or not the United States accepts Palestine as a
21 state.

22 I mean, if by its practice if what it
23 does, you know, is -- is consistent only with a view
24 that Palestine is a state but then somebody gets up
25 and says, oh, it's not a state, you know, that

1 international law and domestic law?

2 A Yes.

3 Q And you think that U.S. courts should be
4 guided by international law --

5 A Yes.

6 Q -- as opposed to domestic law?

7 A There's no opposed domestic law but
8 international law has been found by the U.S. Supreme
9 Court to be something to be applied by the courts of
10 the United States. It goes back to the Paquete
11 Habana case in the early 20th Century in the U.S.
12 Supreme Court. It's been the position of the U.S.
13 Supreme Court from the beginning of the republic.

14 Q What happens if U.S. domestic law
15 conflicts with international law?

16 A Well, I mean, there isn't any conflicting
17 domestic law on -- on this point. But the -- the
18 courts are supposed to apply international law and,
19 in fact, in that -- the case that I mentioned in the
20 U.S. Supreme Court there was conflicting U.S. law,
21 and the court said that it was overridden by
22 international law.

23 Q Okay. In -- in your report did you
24 consider the position of the United States
25 Legislative Branch on whether the United States

45 (Pages 174 to 177)

Page 182

1 to cite even if it required distinguishing?

2 A I mean, I thought it was not relevant to
3 my coming to an opinion as to Palestine's statehood.

4 Q Are you familiar with a case call Knox v.
5 Palestine -- Palestine Libration Organization?

6 A I've heard of it, but I don't know
7 anything about it.

8 Q Okay. I will represent to you that this
9 is a case from the Southern District of New York that
10 was decided in 2004. And I take it you did not rely
11 on that case in writing your expert report in this
12 case, correct?

13 A Correct.

14 Q Are you aware that in that case the court
15 expressly disavowed your opinion on the issue of
16 Palestinian statehood?

17 A I think someone informed me that there
18 was mention of me in that decision, but I haven't
19 looked at it in detail.

20 Q Do you know how the court came to -- came
21 upon your opinion regarding Palestine in the first
22 instance?

23 A I published articles.

24 Q But that wasn't one of the cases that you
25 were an expert for that you --

Page 183

1 A No.

2 Q Okay. I am going to read you a statement
3 from the court's opinion in Knox, and I want you to
4 tell me if you disagree with it. "The Court
5 disagrees with the Defendants and Professor Quigley
6 and is persuaded instead by the weight of judicial
7 and scholarly authority pronouncing that for
8 statehood purposes the PA and PLO do not meet the
9 control requirement." Do you disagree with that
10 statement?

11 A I disagree with the court's, yes,
12 conclusion, yes.

13 Q Okay. And despite the fact that you knew
14 there was this court opinion out there that expressly
15 disavowed your opinion, you didn't think it was
16 important enough to cite in your report, right?

17 A I didn't think it was relevant to my
18 coming to a conclusion as to whether Palestine is a
19 state.

20 Q And you didn't think it was important
21 when you were providing an expert report for a case
22 that is pending in a U.S. court.

23 A I'm -- I'm giving an opinion about facts,
24 about the facts in the international community. What
25 I'm not giving an opinion about is international law

Page 184

1 or about what -- how the court should decide issues
2 of international law except to the extent I am
3 providing a factual basis for them to apply the
4 principles of international law.

5 And if one looks at the international
6 community, one finds this acceptance of Palestine and
7 I think that's what's key and if I am asked to give
8 an opinion that, you know, isn't a book length where
9 I might discuss other people that disagree, you know,
10 I think what I've written is adequate.

11 Q You don't think in providing the
12 framework for a court to apply your factual analysis,
13 as you say it, it's important to point out binding
14 law that takes the opposite position of your opinion?

15 A Well, the fact that they've taken a
16 different approach in the past, you know, isn't
17 really relevant to the approach that I think should
18 be taken. My report is oriented towards what -- the
19 approach that I think needs to be taken.

20 Q Okay. Let me read you -- I am going to
21 read you another quote from the Knox case; and,
22 again, I want you to tell me if you disagree with
23 this statement. "Even absent any intervention from
24 the Executive Branch, the Court notes that it's
25 granting the im" -- "that its granting the immunities

Page 185

1 Defendants seek would, in fact, conflict with
2 declared U.S. public policy regarding the Defendants.
3 Though the PLO has declared Palestine's statehood and
4 several other nations have apparently recognized that
5 status, the United States has yet to recognize a
6 Palestinian state."

7 Did you take that into consideration when
8 you were writing your report?

9 A Well, the statement is the United States
10 has yet to recognize Palestine. That means
11 diplomatic recognition. That's not the totality of
12 the question of statehood.

13 Q So you think the Knox case is consistent
14 with your --

15 A Well, it's clear the United States has
16 not granted diplomatic recognition to Palestine.
17 That's all that's being said there. As a matter of
18 fact, I don't disagree with that, but I don't think I
19 needed to -- to say that.

20 Q And, again, even if -- even if it's your
21 position that the court in Knox is saying something
22 different that -- that touches on the difference
23 between acceptance and diplomatic recognition, even
24 if we take that -- even if we accept that, you didn't
25 think that this case was important enough to include

47 (Pages 182 to 185)

Page 186

1 in your expert report when it's binding U.S. law?

2 A I mean, if the court is saying it's going
3 to find that Palestine is a state because the United
4 States does accord it diplomatic recognition, you
5 know, that doesn't really make much sense because
6 that's not definitive on the view of the United
7 States. Maybe the court is -- has a misunderstanding
8 of the significance of diplomatic recognition. I
9 mean, I can't, you know -- I didn't in my report go
10 over all of the bad analysis that you find from --
11 from -- from courts or from other writers.

12 Q Well, you know that -- you know that
13 courts are bound by their own precedent, right?
14 We've established that, right?

15 MR O'TOOLE: I am going to
16 object. Which courts? Are we talking
17 about Southern District of New York?

18 Q We know the Southern District of New York
19 is bound by its own precedents.

20 MR O'TOOLE: So one judge
21 binds all of them? I want to make sure
22 the question accurately --

23 Q You can answer my question.

24 MR O'TOOLE: -- represents
25 the facts.

Page 187

1 Q You know that the Southern District of
2 New York, the judges of the Southern District of New
3 York, are bound by the other judges of the Southern
4 District of New York's opinions, correct?

5 MR O'TOOLE: I am going to
6 object because I am not sure that's
7 right.

8 A I don't know that to be true.

9 Q Do you know -- do you know that the
10 Southern District of New York at the least is bound
11 by the Second Circuit Court of Appeals' decisions?

12 A Yes.

13 Q Okay. And you don't think that given
14 your position that the Knox case was decided
15 incorrectly wasn't important to point out in your
16 report that there was this reason that they got it
17 wrong and they should instead decide according to
18 your view?

19 A I was asked to do a report on the status
20 of Palestine and whether Palestine is a state. I
21 wasn't asked necessarily to review all of the
22 opinions to the contrary which would have required a
23 much more extensive exercise than what I was engaged
24 in. I included in my report those issues and facts
25 that I thought were relevant to the acceptance of

Page 188

1 Palestine by the international community as a state.

2 Q Okay. Are you -- last one, I promise,
3 are you familiar with a case called Ungar versus the
4 Palestine Libration Organization?

5 A Yes.

6 Q And that was a case decided by the First
7 Circuit Court of Appeals, correct?

8 A My recollection is vague on which
9 circuit.

10 Q I'll represent to you that it's decided
11 by the First Circuit in 1990 -- rather 2005. You did
12 not rely on that case in writing your expert report
13 either, correct?

14 A Correct.

15 Q Are you familiar with the court and
16 Ungar's view on the effect of UN resolutions on
17 United States law?

18 A I don't recall what the court might have
19 said on that point.

20 Q I will read you a statement from that
21 decision. The court said, "To be sure, the
22 Defendants point proudly to the UN's 1974 recognition
23 of the PLO. We do not minimize the political
24 significance of that event. The fact remains,
25 however, that neither political recognition of the

Page 189

1 PLO nor the United Nations support for
2 self-government" -- "self-governance is sufficient to
3 signify that the Restatement's conditions for
4 statehood have been met." Do you agree with that
5 statement?

6 A No.

7 Q And you didn't think it was important to
8 include in your report.

9 A No. It's another instance of bad
10 analysis that goes against my opinion, but the court
11 shouldn't have been referring to Montevideo, and it
12 incorrectly talks about the role of the United
13 Nations. It doesn't talk about the -- well, of
14 course, they couldn't have talked about the 2012
15 resolution, but the resolutions reflect views of
16 individual states and that's what's important about
17 UN resolutions. It isn't so much their -- their
18 effect. I think there is reference there to --

19 Q The United States is an individual state,
20 right?

21 A Yes.

22 Q So to the extent that the United States
23 is part of the United Nations, their position is
24 relevant.

25 A Well, the position of all states is

48 (Pages 186 to 189)

Page 190

1 relevant, but if you have a few states that take a
2 contrary position, that doesn't negate the fact of
3 statehood. And as I say, the position of the United
4 States says -- depends on whether you want to listen
5 to what I would call political pronouncements on the
6 one hand or practical action by the United States
7 which I think does reflect an acceptance of Palestine
8 as a state.

9 Q So do you think that the court should
10 have been guided by UN General Assembly resolutions
11 as opposed to the United States government's
12 position?

13 A Well, I think it should have looked at
14 the issue of the status of Palestine on the basis
15 of -- of international law which is applicable in
16 U.S. courts. It could consider the views of the
17 United States as being significant to the extent that
18 the views of any other state are significant. But it
19 should not have been -- have relied so heavily on the
20 fact that the United States hasn't granted diplomatic
21 recognition which doesn't even mean the United States
22 doesn't accept Palestine as a state.

23 Q Do you think that this debate or this
24 way -- this way in which you distinguish Ungar was
25 relevant to your expert report in this case?

Page 191

1 A Well, I don't think it was necessary for
2 my conclusion to explain why Palestine is a state to
3 be refuting all, you know, contrary analyses.

4 Q Even if that contrary analysis is binding
5 United States law?

6 A I do not accept your position that it's
7 binding United States law. This is the Second
8 Circuit?

9 Q First Circuit. And we are in a district
10 court, and the First Circuit is an appellate court.

11 A And there has been a great deal of
12 international practice since the time of Ungar so
13 there's no need for a U.S. district court in the
14 First Circuit to follow the Ungar approach without
15 question, I mean, because it's a question of
16 international practice, and they would have to take
17 into account the totality of that practice.

18 Q Okay. Have you -- are you familiar with
19 the Southern District of New York's 2008 decision in
20 the present case on which you are opining?

21 A No.

22 Q No. I will read you a sentence from that
23 case which again was -- I will represent to you was a
24 case decided in the Southern District of New York in
25 2008 in the Sokolow case. "Palestine whose statehood

Page 192

1 is not recognized by the United States does not meet
2 the definition of a state under United States and
3 international law and, hence, does not constitute a
4 foreign state for FSIA purposes." Did you consider
5 that decision in your expert report?

6 A No. Again, I think it's simply incorrect
7 and would not lead me to come to any different
8 opinion, again, the referring to recognition as if
9 recognition is key. And they are referring to the
10 definition of state under U.S. law. There is no
11 definition of state under U.S. law. The definition
12 of state comes out of international law. Maybe
13 that's what they mean and they are just being -- the
14 court is being imprecise.

15 Q That is your opinion as to how to
16 distinguish this case, correct, or how to cast doubt
17 upon this case, correct?

18 A It's why I didn't -- wouldn't have
19 considered it to lead me to come to a contrary
20 opinion.

21 Q "Yes" or "no," that was your opinion as
22 to why this case was decided incorrectly, right?

23 A Yes, yes.

24 Q And this is a decision that has come down
25 in the precise matter you are opining on, correct?

Page 193

1 A Yes. I am being asked for my opinion. I
2 am not asking what the court has already said.

3 Q But in providing your expert opinion for
4 a case on which there was a decision that was
5 contrary to your opinion, you didn't think it was
6 important to present the exact type of analysis that
7 you just said here to distinguish this decision?

8 A Well, I think what I have said in my
9 report explains why -- the reasoning that's reflected
10 in what you read to me is not correct. I didn't need
11 to mention it, you know, by page citation
12 necessarily.

13 Q And you weren't -- you weren't familiar
14 with this decision while you were writing your
15 report, correct?

16 A No, no. But I -- but I think I -- what
17 I've said is an adequate recitation of that.

18 Q So we talked about, for example, the 2003
19 performance-based road map for -- to a permanent
20 two-state solution to the Israeli-Palestinian
21 Conflict, right?

22 A Yes.

23 Q And that obviously by its name was a
24 source from 2003, right?

25 A Yes.

49 (Pages 190 to 193)

Page 194

1 Q That was before the 2004 Knox decision,
2 correct?

3 A Yes. I'm taking the date of it from you,
4 yes.

5 Q And that was before the 2005 Ungar
6 decision, right?

7 A Again, I'm taking your date.

8 Q And that was before the 2008 decision in
9 this matter, correct?

10 A Yes.

11 Q But you didn't rely on any of those cases
12 in coming to the conclusions that you did in your
13 expert report, right?

14 A Well, I mean, I referred to the 2003 road
15 map, the fact that maybe nobody cited that to the
16 court in those cases, the court didn't take it into
17 account --

18 Q I am asking if you cited to any of these
19 cases which were more recent assertions made by the
20 United States -- a branch of the United States
21 government. I am asking whether you took those
22 sources into consideration in your report as opposed
23 to a 2003 document that impliantly accepted Palestine
24 as a state.

25 A No. The 2003 document shows the United

Page 195

1 States accepts Palestine as a state. The subsequent
2 cases are simply badly reasoned opinions on the
3 subject.

4 Q Okay. Did you cite any source in your
5 report that takes the opposite view of your
6 conclusions?

7 A I did not.

8 Q Why?

9 A I took it as my task to make an argument
10 in support of the proposition that I believed. My
11 conclusion is that Palestine is a state, and I
12 presented the evidence showing that. I mean, I could
13 have written a much longer report that goes into, you
14 know, scholars X, Y, and Z but that was not what it's
15 doing.

16 Q But you acknowledge that there are other
17 scholars that disagree with your assertion?

18 A Certainly.

19 Q And you acknowledge there are other
20 United States law that is binding on the Southern
21 District, at least the Second Circuit case that
22 disagree with your opinion?

23 A Yes, except to the extent when you say
24 it's binding all these cases that were decided, of
25 course, before the General Assembly action of 2012.

Page 196

1 Q And the United States voted against the
2 General Assembly resolution of 2012, right?

3 A That's correct but irrelevant, yes.

4 MS. MACHNES: Okay, okay.

5 If we could just take a 2- or 3-minute
6 break.

7 MR O'TOOLE: That's fine.

8 MS. MACHNES: We might be
9 able to wrap up shortly.

10 (Recess taken.)

11 Q Professor Quigley, do you know how many
12 countries have not granted Palestine diplomatic
13 recognition?

14 A There are about 190 depending on how you
15 count exactly 190 countries. There are approximately
16 130 that have granted diplomatic recognition so that
17 would be 60 that have not.

18 Q Okay. And the 130 you are getting from
19 the 2012 General Assembly resolution?

20 A No, no. That's not related to the
21 General Assembly resolution. That's -- that's
22 related to diplomatic practice, the establishment of
23 diplomatic relations, Palestine diplomatic missions
24 in different countries.

25 Q So that's based on some independent

Page 197

1 analysis that you have done?

2 A Yes, yes.

3 Q Okay. And what does that analysis
4 consist of?

5 A It's based on looking at the practice
6 of -- of states with respect to granting diplomatic
7 recognition to -- to Palestine.

8 Q So those 130, have they expressly granted
9 diplomatic recognition or have some of them
10 impliantly granted --

11 A Those are all fairly expressed. There
12 may be some fudging or some room for difference of
13 opinion on some of them which is why I'm not prepared
14 to state a hard and fast number, but it's -- it's
15 close to that number of 130.

16 Q How many, approximately, do you think may
17 fall into the fudging category?

18 A Well, I mean, most of them have
19 diplomatic relations in the way that you have
20 diplomatic relations with states. That's fairly
21 solid so a few of them may have made statements that
22 are a bit mirky but it would -- the number that's
23 solid is rather close to the 130, I think.

24 MS. MACHNES: Okay. I
25 think we are finished.

50 (Pages 194 to 197)

Page 198

Page 200

MR O'TOOLE: I think I have
very few questions.

EXAMINATION

BY MR. O'TOOLE:

Q So earlier, Professor Quigley, you were
asked about the control by the Palestinian government
over the territory of Palestine and the West Bank
during the period from 2000 -- 2000 to 2004. Do you
recall that?

A Yes.

Q And I believe you testified that the
Palestinian government provided various services
during that timeframe such as police, they arrested
people, that there were court systems going on. Do
you recall that testimony?

A Yes.

Q Now, when you were talking about the 2000
to 2004 time period, were there things going on at
that point that would have -- would affect the
control that the government might have had in that
time period?

A Well, of course, as the occupation of
Israel which limited the extent of control.

Q And I'm thinking also in that time period
are you familiar with an operation that's been

Q And in other cities in the West Bank as
well or no?

A In other cities, yeah, Jenin was the most
prominent.

Q And would that affect your description of
the amount of Palestinian control over the
territories during that time period?

A Well, that's a reflection of the fact
that the control was limited to Palestine's
government, didn't have the ability to prevent the
Israeli armed forces from coming into the territory
that was supposedly under the control of the PA.

Q Now, did those facts in terms of the
insurgents have any effect on your opinion as to
Palestinian statehood?

A Well, there is overall belligerent
occupation here. That means that there -- there
isn't total control and those incidents are just a --
an example of how that worked out in practice.

Q Turning to a different topic now, I
think -- I believe you testified that the United
States does not diplomatically recognize Palestine;
is that correct?

A Yes.

Q And does that affect your opinion as to

Page 199

Page 201

referred to as Operation Defensive Shield?

A No.

Q Well, let --

MS. MACHNES: Objection.

MR O'TOOLE: What's the
basis?

MS. MACHNES: Leading the
witness.

MR O'TOOLE: I was asking
him if he is familiar with Operation
Defensive Shield. He said no.

MS. MACHNES: He said no.

MR O'TOOLE: Right, so I'm
asking him now if he is familiar with
various insurgents by the Israeli
Defense Forces into the West Bank
between 2000 and 2004.

A Oh, yes, yes.

Q Can you just explain the extent of those
insurgents?

A Well, yeah. This was a period when there
were insurgents, in particular the most significant
was in the town of Jenin in the West Bank that --
where the Israel Defense Forces engaged in rather
extensive military operations.

whether Palestine is a state?

A Well, if the United States were to accord
diplomatic recognition, it would mean that the United
States was part of this what I find the international
consensus, so the view of the United States is not
definitive or determinative on the issue of whether
Palestine is a state.

Q Well, and I was going to ask for other
examples where there might be an unrecognized state.
Do you have any other examples of that?

A Well, I mean, there are, you know, such
instances. The United States didn't recognize the
Soviet Union as a state until the Roosevelt
Administration in 1933, but it had been functioning
since the time of the revolution in Russia and was
generally accepted as a state by the European powers,
by other states of the world so you did have a
situation of -- for that time period of
nonrecognition by the United States of an entity that
I think it's fair to say was -- was accepted as a
state at that point in the international community.

MR O'TOOLE: No further
questions.

MS. MACHNES: Done.

(Time Noted: 3:18 p.m.)

51 (Pages 198 to 201)